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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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|---|---|
| Proceeding | 91199033 |
| Party | Defendant<br>Hanson, Amanda Marie, Nowlin, Judith Ann |
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| Date | 04/17/2011 |
| Attachments | 91199033 IBIRTH Opposition Letter Answer.pdf ( 4 pages )(116704 bytes ) |

# The Answer

April 17, 2011

CATHERINE STEWART-LINDLEY

vs.

JUDITH ANN NOWLIN, DBA IBIRTH LIMITED
AMANDA MARIE HANSON, DBA IBIRTH LIMITED

Opposition No. 91199033

Accusations from Opposer

1. Opposer, since 2006 and long prior to any date of first use upon which Applicants can rely, has adopted and continuously used the term IBIRTH as a trademark for *educational services, namely conducting classes and workshops in the field of childbirth and postpartum* and related services.

**1. ANSWER: DENY**

2. Opposer is the owner of Trademark Application Ser. No. 85/113,199 for the mark IBIRTH for *educational services, namely conducting classes and workshops in the field of childbirth and postpartum in Class 41.* Opposer claims first use in commerce of IBIRTH on November 21, 2006. True and correct copies of the electronic record for this application printed from the United States Trademark Office's (USPTO) Trademark Applications and Registrations Retrieval ("TARR") online database are attached hereto as Opposer's Exhibit 1.

**2. ANSWER: DENY**

3. Opposer has made investments in advertising and in promoting its services under IBIRTH. Opposer has used, advertised, promoted and offered Opposer's services under IBIRTH to the relevant purchasing public through channels of trade in commerce, such that Opposer's customers and the relevant purchasing public have come to know and recognize IBIRTH and associate it with Opposer and/or the services offered by Opposer. Opposer has built goodwill in connection with the provision of services under IBIRTH.

**3. ANSWER: DENY**

4. Applicants have filed an application to register the mark IBIRTH for *educational services, namely providing video presentations, related film clips and information, in the field of childbirth preparation rendered via mobile platforms in Class 41*. That application was filed on May 12, 2010, and was assigned Serial No. 85/036,007. Applicants claim first use in commerce of the alleged IBIRTH trademark on November 1, 2009. True and correct copies of the electronic record for this application printed from the USPTO's TARR online database are attached hereto as Opposer's Exhibit 2.

**4. ANSWER: ADMIT**

5. Opposer's common law rights in IBIRTH, are superior to any rights Applicants may have in the IBIRTH mark.

**5. ANSWER: DENY**

6. Applicants' proposed mark is confusingly similar to Opposer's mark because it is identical in appearance, sound, and commercial impression, pursuant to 15 U.S.C. 1052(d). The likelihood of confusion is further exacerbated because the services offered under Applicants' mark are identical, or closely related, to the services offered under the Opposer's mark. Applicants and Opposer both market their services to the same, narrow consumer. Accordingly, consumers may believe, incorrectly, that Applicants' use of IBIRTH is an extension of Opposer's mark.

**6. ANSWER: DENY**

7. Given the goodwill arising from the association of the IBIRTH mark with Opposer, consumers may believe, incorrectly, that Opposer has licensed, approved, or otherwise authorized Applicants' use of the IBIRTH when it has not.

**7. ANSWER: DENY**

8. The maturation of Applicants' application into registration will cause a likelihood of confusion, mistake or deception with respect to the source or origin of Applicants' services. Consumers will erroneously believe that Applicants' services are associated with Opposer.

**8. ANSWER: DENY**

9. In view of Opposer's superior rights in the IBIRTH mark, the USPTO should refuse the registration of IBIRTH by Applicants.

**9. ANSWER: DENY**

10. Pursuant to 15 U.S.C. 1063(a), Opposer will be damaged by registration of Applicants' mark, which would grant Applicants a *prima facie* exclusive right to use the proposed mark despite Opposer's priority over Applicants and the likelihood of confusion and injury to goodwill that will be caused by Applicant's mark.

**10. ANSWER: DENY**

11. In summary, registration of the proposed mark would be incorrect and improper in view of the requirements of the Trademark Act of 1946, as amended, including specifically but not limited to the provisions of 15 U.S.C. 1051, *et seq.*

**11. ANSWER: DENY**

RESPECTFULLY SUBMITTED,
BY:

JUDITH ANN NOWLIN
AND
AMANDA MARIE HANSON